

**RULES  
OF  
DEPARTMENT OF REVENUE  
INCOME TAX DIVISION**

**CHAPTER 560-7-8  
RETURNS AND COLLECTIONS**

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**560-7-8-.38 Child Care Credit, Definitions and Description.**

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**(1) Definitions.** As used in this regulation:

(a) **Child.** The term "child" means a person under the age of 13 when the child care is provided who is a dependent of an employee and for whom the employee can claim an exemption for Georgia income tax purposes.

(b) **Cost of Operation.** The term "cost of operation" means the reasonable, direct, operational costs incurred by an employer as a result of providing employer provided or employer sponsored child care facilities for such employer's employees. Such costs include, but are not limited to, salaries, supplies, rent, food, transportation, educational and special activities, and payments made to a qualified child care facility pursuant to a contractual arrangement. Such costs, however, do not include the cost to the employer of any property that is qualified child care property.

(c) **Employee.** "Employee" means any person employed full-time or part-time by an employer, whose actions are directed by

the employer and who is subject to the payroll tax provided for in Article 5 of Chapter 7 of Title 48.

(d) **Employer.** "Employer" means any employer upon whom a Georgia income tax is imposed or who is otherwise required to file a Georgia income tax return.

(e) **Employer Provided.** The term "employer provided" refers to child care provided by the employer, offered to employees of the employer, and provided on the premises of the employer. However, the term "employer provided" does not include child care provided on the premises owned by the employer which are in turn leased to a third party providing the child care.

(f) **Employer Sponsored.** The term "employer sponsored" refers to child care provided for by the employer and offered to employees of the employer pursuant to a contractual arrangement between the employer and a party which operates a qualified child care facility in Georgia but only if the cost of the child care is paid for by the employer directly to the entity providing the child care.

(g) **Premises of the Employer.** The term "premises of the employer" means a location in Georgia which constitutes the workplace premises of the employer providing the child care or one of the employers providing the child care in the event that the child care property is owned jointly or severally by the taxpayer employer and one or more other employers. The term may also include a facility located within a reasonable distance from the workplace premises of the employer if such workplace premises are deemed by the Commissioner after application by the employer to be impracticable or otherwise unsuitable for the on-site location of the qualified child care facility. Factors to be considered in making this determination may include, but shall not be limited to:

1. The relative size of the qualified child care facility when compared to the size of the workplace premises site;
2. The presence of hazardous substances or other dangerous conditions, materials or structures on or near the workplace premises; or
3. Any other factor deemed relevant by the Commissioner to the safety and well-being of the children for whom the care is provided.

(h) **Qualified Child Care Facility.** The term "qualified child care facility" means any child-caring institution as defined under O.C.G.A. Section 49-5-3 which is licensed or commissioned as a "child welfare agency" by the Georgia Department of Human Services pursuant to O.C.G.A. Section 49-5-12, or approved by any successor agency having regulatory authority over child care services. This definition includes state regulated after school programs.

(i) **Qualified Child Care Property.** The term "qualified child care property" means all real and tangible personal property purchased or acquired on or after July 1, 1999, or which property is first placed in service on or after July 1, 1999, for use exclusively in the construction, expansion, improvement, or operation of an employer provided child care facility and for which applicable depreciation has been claimed for federal income tax purposes (except that depreciation is not required for any land that is qualified child care property). Such property may include amounts expended on land acquisition, improvements, buildings, and building improvements and furniture, fixtures, and equipment used for such facility when the facility is either owned or leased by the employer. Where property, previously owned by the taxpayer, is converted for use as a

qualified child care facility, only those costs involved in the conversion to such qualified child care use shall be included. No such property shall be considered "qualified child care property" unless:

1. The facility is licensed or commissioned by the Department of Human Services pursuant to O.C.G.A. Section 49-5-12, or approved by any successor agency having regulatory authority over child care services;

2. At least 95 percent of the children who use the facility are children of the employees of the taxpayer and other employers if the child care property is owned jointly or severally by the taxpayer and one or more other employers; or a corporation that is a member of the taxpayer's "affiliated group" within the meaning of Section 1504(a) of the Internal Revenue Code. For the purposes of meeting the 95% requirement contained in this subparagraph, the number of children attending the facility should be reasonably representative of each employer's capital contribution to the facility; and

3. The taxpayer has not previously claimed any tax credit for the cost of operation for such qualified child care property placed in service prior to taxable years beginning on or after January 1, 2000.

(j) **Recapture Amount.** The term "recapture amount" means, with respect to property as to which a recapture event has occurred, an amount equal to the applicable recapture percentage of the aggregate credits claimed under O.C.G.A. Section 48-7-40.6(d) for all taxable years preceding the year of recapture, whether or not such credits were used, which amount must be added back in the tax year in which the recapture event occurs.

(k) **Recapture Event.** The term "recapture event" refers to any disposition by sale of qualified child care property by the taxpayer, or

any other event or circumstance under which property ceases to be qualified child care property with respect to the taxpayer, except for:

1. Any transfer by reason of death;
2. Any transfer between spouses or incident to divorce;
3. Any transaction to which Section 381(a) of the Internal Revenue Code applies;
4. Any change in the form of conducting the taxpayer's trade or business so long as the property is retained in such trade or business as qualified child care property and the taxpayer retains a substantial interest in such trade or business;
5. Any accident or casualty; or
6. Any instance where qualified child care property can no longer function because of its structural or mechanical failure or its obsolescence.

(2) **Tax Credit for Cost of Operation.** The credit to be claimed pursuant to O.C.G.A. Section 48-7-40.6(b) is a tax credit against the Georgia income tax and it shall be granted to an employer who makes available employer provided or employer sponsored child care for employees of such employer.

(a) **Calculation of Credit.** The amount of the credit granted to an employer shall equal 75 percent of the cost of operation for an employer provided or employer sponsored qualified child care facility for that taxable year less any amounts paid to the employer by the employees for the child care. (75% X (costs of operation less any reimbursements paid by employees to the employer)).

Where the qualified child care facility is jointly owned by the taxpayer employer and one or more other employers, the amount of the cost incurred by the taxpayer employer and eligible for the cost of operation tax credit calculation may not exceed the taxpayer employer's pro rata share of the total cost of operation of the facility measured by the number of children served by the facility during any part of the taxable year that are children of employees of the taxpayer employer when compared to the total number of children served during any part of the taxable year by the facility.

(b) **Limitation.** The amount of the cost of operation tax credit granted to any employer shall not exceed 50 percent of the employer's Georgia income tax liability for the taxable year as computed without regard to the application of any other credit including the cost of qualified child care property tax credit provided under paragraph (3) of this Regulation.

(c) **When the Credit May be Taken.** The cost of operation tax credit may be claimed in the same taxable year in which the cost of operation is incurred. Any unused credit may be carried forward for five years from the close of the taxable year in which the cost of operation was incurred.

(d) **Certification.** Employers must maintain in their files records for certifying the cost of operation to the Department. These records must include the names and social security numbers of employees who utilize the facility; the names, ages, and social security numbers (if age 1 or older) of children of employees utilizing the facility; the name and federal identification number of the child care provider; and such other information as may be required by the Department.

(e) **Form IT-CCC75.** Employer Child Care Computation Form

IT-CCC75 must be attached to the Georgia Income Tax Return of the employer.

**(3) Tax Credit for Cost of Qualified Child Care Property.**

The tax credit for the cost of qualified child care property, pursuant to O.C.G.A. Section 48-7-40.6(d) is a credit against the tax imposed under Article 2 of Chapter 7 O.C.G.A. which may be claimed for the taxable year in which the taxpayer first places in service qualified child care property and for each of the next succeeding nine taxable years. The aggregate amount of the credit shall equal 100 percent of the cost of all qualified child care property purchased or acquired by the taxpayer and first placed in service during a taxable year and such credit may be claimed at a rate of 10 percent per year for the ten year period.

(a) **Limitation.** The amount of the credit granted to any taxpayer employer may not exceed 50 percent of the employer's Georgia income tax liability for the taxable year as computed without regard to the application of any other credit including the tax credit for cost of operation provided for in paragraph (2) of this Regulation.

(b) **When the Credit May be Taken.** The credit may be claimed in the same year in which the qualified child care property is acquired or placed in service. Any unused credit in any taxable year may be carried forward for three years from the close of the taxable year in which the credit is claimed.

(c) **Required Adjustments.** If the taxpayer claims the cost of qualified child care property tax credit, Georgia taxable income shall be increased by the amount of any depreciation deductions attributable to such property to the extent that such deductions are used in determining federal taxable income or federal adjusted gross income.

(d) **Reporting Requirements.** For each year in which a taxpayer claims the tax credit for the cost of child care property, the taxpayer shall attach to the taxpayer's Georgia income tax return a properly completed form IT-CCC100 and a schedule setting forth the following information with respect to such tax credit:

1. A description of the qualified child care facility;
2. The amount of the qualified child care property acquired during the taxable year and the cost of such property;
3. The amount of tax credit claimed for the taxable year;
4. The amount of qualified child care property acquired in prior taxable years and the cost of such property;
5. The amounts of any tax credit utilized by the taxpayer in prior taxable years;
6. The amounts of tax credit carried over from prior taxable years;
7. The amount of tax credit claimed by the taxpayer for the current taxable year;
8. The amount of tax credit to be carried forward to subsequent taxable years; and
9. A description of any recapture event occurring during the taxable year, a calculation of the resulting reduction in tax credits allowable for the recapture year and future taxable years, and a calculation of the resulting increase in tax for the recapture year.



(e) **Recapture.** When a recapture event, as defined herein, occurs with respect to any specific qualified child care property, the tax credit for such property authorized by paragraph (3) of this regulation for the recapture year and all subsequent tax years shall be eliminated. All credits previously claimed by the taxpayer with respect to such property shall be recaptured in accordance with the recapture percentages provided for in O.C.G.A. Section 48-7-40.6(a)(9); and the taxpayer's tax for the recapture year shall be increased in accordance with O.C.G.A. Section 48-7-40.6(f).

(f) **Certification.** Employers must maintain records for certifying to the Department the amount of qualified child care property acquired during any taxable year and the cost of such property. Such records include the names and social security numbers of employees utilizing the child care facility; the names, ages, and social security numbers (if age 1 or older) of all children of employees for which the child care is provided; the name and federal identification number of the child care provider, and such other information as may be required by the Department.

(4) **Pass-Through Entities.** When the employer is a pass-through entity, and has no income tax liability of its own, the tax credits will pass to its members, shareholders, or partners based on the year ending profit/loss percentage. The credit forms will initially be filed with the tax return of the taxpayer to establish the amount of the credit available for pass through. The credit will then pass through to its shareholders, members, or partners to be applied against the tax liability on their income tax returns. The credits are available for use as a credit by the shareholders, members, or partners for their tax year in which the income tax year of the pass-through entity ends. For example: A partnership earns the credit for its tax year ending January 31, 2009. The partnership

passes the credit to a calendar year partner. The credit is available for use by the partner beginning with the calendar 2009 tax year.

(a) Shareholders, members, or partners who receive the credit from a pass-through entity under paragraph (4) of this regulation shall also be subject to any disallowance, if taken erroneously, or any recapture of those credits as provided for in this regulation.

Authority: O.C.G.A. Sections 48-2-12 and 48-7-40.6.